

proposed rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 17]

GRIZZLY BEAR

Proposed "Threatened" Status in the Conterminous 48 States

The Director, United States Fish and Wildlife Service, hereby issues a notice of proposed rulemaking which would list the grizzly bear (*Ursus arctos horribilis*) in the 48 conterminous States of the United States as a threatened species in 50 CFR 17.32 and establish appropriate regulations to provide for the conservation of such species.

BACKGROUND

On February 14, 1974, the Fund for Animals, Inc., petitioned the Department of the Interior to list the grizzly bear (*Ursus arctos horribilis*) in the conterminous 48 States of the United States as an "endangered" species. This petition, and accompanying supportive data, were examined by Fish and Wildlife Service biologists who determined that the Fund for Animals, Inc., had presented sub-

stantial evidence to warrant a review of the status of the grizzly bear in the conterminous 48 States; a notice to that effect was placed in the FEDERAL REGISTER on March 29, 1974 (39 FR 11611). Simultaneously, the Governors of States in which grizzly bears are resident were notified of the review and were requested to supply data relative to the status of the species in their respective States.

As a result of this review, the Director finds that there are sufficient data to warrant a proposed rulemaking that the grizzly bear is a "threatened" species in the 48 conterminous States of the United States. This position is taken recognizing that reliable population status information is unavailable except for the Yellowstone Ecosystem; and even here there are conflicting estimates of the population. Currently, studies are underway in the States south of Canada which, in time, will provide better information. Consequently, the Director will reevaluate his position as new information becomes available and take appropriate action, if needed, at that time.

The Endangered Species Act of 1973 [16 U.S.C. 1533(a)(1)] includes the following statement:

The Secretary shall by regulation determine whether any species is an endangered species or a threatened species because of any of the following factors:

- (1) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (2) Overutilization for commercial, sporting, scientific, or educational purposes;
- (3) Disease or predation;
- (4) The inadequacy of existing regulatory mechanisms; or
- (5) Other natural or manmade factors affecting its continued existence.

Specifically, with regard to the grizzly bear in the conterminous 48 States, present evidence suggests that conditions (1), (2), and (5) are pertinent. One or more of these conditions are affecting each of the remaining grizzly bear populations in each of the named ecosystems as well as in the remainder of the conterminous 48 States. Major factors include, but are not limited to, the following:

(1) *Present or threatened destruction, modification, or curtailment of habitat or range.* (a) The range of the grizzly bear, which at one time was much of the western United States, is now confined to isolated regions in Montana, Idaho and Wyoming.

(b) Land use practices, including livestock grazing, timbering and trail construction in areas where these bears still occur have resulted in the building of numerous access roads and trails into

areas which were formerly inaccessible. This has resulted in making the bears more accessible to legal hunters, illegal poachers, human-bear conflicts, and livestock-bear conflicts.

(2) *Overutilization for commercial, sporting, scientific or educational purposes.* Many persons consider these bears as dangerous vermin; such an attitude results in a continual loss of animals through indiscriminate illegal killing. Other bears are taken regularly in control operations, because they are considered a threat to human safety, and still others are lost because of livestock depredations on public and private lands. In addition, legal sport hunting is continuing in two of the three States where grizzlies still occur. The resulting total mortality is considered excessive both by the Montana Cooperative Wildlife Research Unit and the National Academy of Sciences.

(3) *Other natural and manmade factors affecting its continued survival.*

(a) In two of the three areas where grizzly bears still occur, they are isolated from other populations so that they cannot be reinforced, either genetically or by movement of individual bears.

(b) Increasing human use of Yellowstone and Glacier National Parks, as well as livestock use of surrounding national forests, will exert increasing detrimental pressures on grizzly bears.

(c) Rapid closing of the garbage dumps in Yellowstone National Park in 1970 and 1971 may have resulted in a dispersal of the bears out of the Park and into adjacent States where they were and are subject to legal and illegal killing.

PROPOSAL

Grizzly bears in the coterminous 48 States occur almost entirely in three grizzly bear "ecosystems." These are: Selway-Bitterroot Ecosystem (Clearwater National Forest, the Selway-Bitterroot Wilderness Area, and the Salmon River Breaks Primitive Area); Bob Marshall Ecosystem (Flathead National Forest, Bob Marshall Wilderness Area, Mission Mountains Primitive Area, and Glacier National Park); and Yellowstone Ecosystem (Yellowstone National Park, Grand Teton National Park, Teton National Forest, that part of Shoshone National Forest north of Wind River, that part of Targhee National Forest east of U.S. Highway 20, that part of Gallatin National Forest south of Interstate Highway 90, and the Beartooth Primitive Area).

No new Federal regulations are now thought necessary for the Bob Marshall Ecosystem because in 1975 Montana will implement a strictly controlled annual quota on the number of grizzly bears that may be taken therein, and because of other considerations. The following letter from the Montana Department of Fish and Game reflects these considerations.

STATE OF MONTANA DEPARTMENT OF FISH AND GAME

NOVEMBER 25, 1974.

Mr. LYNN A. GREENWALT,
Director, Fish and Wildlife Service
Washington, D.C.

DEAR LYNN: In the interest of maintaining an effective and harmonious program of grizzly bear management and in order for the U.S. Department of Interior to find inadvisable and unnecessary the placing of any restrictive federal regulations on grizzly bear in the Bob Marshall ecosystem, the Montana Fish and Game Commission has developed the following program:

(1) That the maximum number of grizzly bear to be removed annually from the Bob Marshall ecosystem will not exceed 25. Our records show that the average annual take from this population since 1967 has been 29 and at this time it is felt that a conservative take from this population would be advisable. In order to control the removal of bears from the population there will be an annual quota not to exceed the established number of 25. This number will include bears lost from any other cause and the annual legal harvest will be so adjusted. Hunters holding bear permits will be required to report a kill to the Department of Fish and Game within 48 hours and within a ten-day period shall be required to submit the hide and skull to the department for scientific analysis and purchase a trophy permit. The hunting season will be closed upon 48 hours notice when the removal figure begins to approach 25.

(2) Removal of nuisance bears will be held to a minimum through live-trapping and transplanting into inaccessible areas and by other means available to the department. The bear in question would be killed only when all else fails. All bears taken will be, if possible, transported to the department's wildlife laboratory in Bozeman where complete scientific data will be recorded and analyzed. All such records will, of course, be available to all cooperating agencies and the public.

(3) No change in the above policies will be made without giving 90 days notice in writing to the Director of the Fish and Wildlife Service.

Sincerely,

WESLEY R. WOODGERD,
State Fish and Game Director.

However, it is proposed herein that regulations be applied to the other two ecosystems and to the grizzly bears which may occur in other areas of the coterminous 48 States. Such regulations involve a comprehensive system to provide for the conservation of the grizzly bear in those two ecosystems. The proposal would also cover grizzly bears outside such areas through a "look-alike" provision. Under this provision, bears from other geographic areas would also be treated as "threatened" unless there was evidence provided establishing that such bears originated outside the portion of their range where they are considered threatened.

On December 30, 1974, the FWS Wildlife Service published an amendment to the Endangered regulations (39 FR 44990) dealing with kangaroos. That amendment, Part 17 "Endangered and Threatened Wildlife," and established a new D for threatened wildlife. Pending complete revision of Part 17, presently in preparation, this would further amend Part 17 by adding a new subpart E for similar appearance ("look-alike") species.

PUBLIC COMMENTS SOLICITED

The Director intends that adopted rules be as responsive as possible to the conservation of the grizzly bear. He therefore desires to obtain comments and suggestions of the other concerned governmental and private interests on these rules.

Final promulgation of grizzly regulations will take into consideration the comments received by the Service. Such comments and any additional information received, may lead the Service to adopt final regulations different from this proposal. The Fish and Wildlife Service has under preparation an environmental assessment concerning this matter.

SUBMITTAL OF WRITTEN COMMENTS

Interested persons may participate in this rulemaking by submitting comments, preferably in triplicate, to the Director (FWS/LE), U.S. Fish and Wildlife Service, P.O. Box 19183, Washington, D.C. 20036. All relevant comments received no later than March 1, 1975, will be considered. The Service attempts to acknowledge receipt of comments, but substantive responses to individual comments may not be provided. Comments received will be available for public inspection during normal hours at the Service's office in Suite 1612 K Street, NW., Washington, D.C.

This notice of proposed rulemaking is issued under the authority of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543).

Dated: December 26, 1974.

M. A. MARSTO
Acting Director
Fish and Wildlife Service

PROPOSED REGULATIONS

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Title 50 of the Code of Federal Regulations, as follows:

1. Amend proposed § 17.32(a) by adding the following:

§ 17.32 Threatened wildlife list.

Common name	Scientific name	Range	Portion of where threatened
(a) Mammals:			
(1) . . . . .	. . . . .	. . . . .	. . . . .
(2) . . . . .	. . . . .	. . . . .	. . . . .
(3) . . . . .	. . . . .	. . . . .	. . . . .
(i) . . . . .	. . . . .	. . . . .	. . . . .
(4) Grizzly bear	<i>Ursus arctos horribilis</i>	North America west of the Mississippi River.	Coterminous with the United States

PROPOSED RULES

(i) *Prohibitions.* These prohibitions apply to the *Ursus arctos horribilis* listed above.

(A) *Bob Marshall Ecosystem.* The following prohibitions apply only to such wildlife found in the Flathead National Forest, the Bob Marshall Wilderness Area, the Mission Mountain Primitive Area, and Glacier National Park, which together comprise the Bob Marshall Ecosystem in the State of Montana:

(I) Except as permitted by the laws and regulations of the State of Montana, no person shall take any such wildlife found in the Bob Marshall Ecosystem.

(B) *Selway-Bitterroot Ecosystem.* The following prohibitions apply only to such wildlife found in the Clearwater National Forest, the Selway-Bitterroot Wilderness Area, and the Salmon River Breaks Primitive Area, which together comprise the Selway-Bitterroot Ecosystem in the States of Idaho and Montana.

(I) Except as necessary in self-defense, no person shall take any such wildlife found in the Selway-Bitterroot Ecosystem: *Provided*, That any such taking in self-defense shall be lawful only if fully reported to the Director, and to appropriate State authorities, as soon as practicable after such taking, and in any event, within 30 days of such taking.

(C) *Other Areas of the 48 Conterminous States.* The following prohibitions apply to all such wildlife found in all areas of the 48 conterminous States not mentioned in prohibitions (A) and (B) above.

(I) Except as necessary in self-defense, or to prevent other serious threats to human safety, or to prevent significant depredations to lawfully present livestock, no person shall take any such wildlife found in any area of the 48 conterminous States and not mentioned in prohibitions (A) and (B) above. Any such taking in self-defense shall be lawful only if fully reported to the Director, and to appropriate State authorities, as soon as practicable after such taking, and in any event, within 30 days of such taking. Any such taking to prevent other serious threats to human safety, or to prevent significant depredations to lawfully present livestock, shall be lawful only if (1) it was not reasonably possible to eliminate such threat or depredation by live-capturing and releasing unharmed in a remote area the wildlife involved; and (2) such taking is fully reported to the Director as soon as practicable after occurrence, and in any event, within 30 days of occurrence.

(D) No person shall import any such wildlife into the United States.

(E) No person shall export any such wildlife from the United States.

(F) No person shall possess, sell, deliver, carry, transport, or ship any such wildlife taken unlawfully.

(G) No person shall, in the course of a commercial activity, deliver, receive, carry, transport, or ship in interstate or foreign commerce any such wildlife.

(H) No person shall sell or offer for sale in interstate or foreign commerce any such wildlife.

(I) No person shall attempt to commit, cause to be committed, or solicit another to commit, any act covered in prohibitions (A) through (H) above.

2. Add a new Subpart E, and §§ 17.41 and 17.42, to read:

Subpart E—Similarity of Appearance

§ 17.41 General.

(a) *Wildlife resembling endangered wildlife—treatment as endangered.* Having found applicable the factors listed in section 4(e) of the Endangered Species Act of 1973 [16 U.S.C. 1533(e)], the Director deems it advisable, for enforcement purposes, because of the resemblance to endangered species of the species listed below to treat the species below as endangered, and as subject to all prohibitions applicable to the endangered species which such wildlife resembles, unless documentation or other evidence is presented which clearly establishes that any such wildlife in question is not endangered.

(b) *Wildlife resembling endangered wildlife—list.*

Common name	Scientific name	Range	Endangered species to which similar
[Reserved]....	[Reserved]..	[Reserved]..	[Reserved].

(c) *Wildlife resembling threatened wildlife—treatment as threatened.* Having found applicable the factors listed in section 1533(e) of the Endangered Species Act of 1973 [16 U.S.C. 1533(e)], the Director deems it advisable, for enforcement purposes, because of the resemblance to threatened species of the species listed below to treat the species listed below as threatened, and as subject to all prohibitions applicable to the threatened species which such wildlife resembles, unless documentation or other evidence is presented which clearly establishes that any such wildlife in question is not threatened.

(d) *Wildlife resembling threatened wildlife—list.*

Common name	Scientific name	Range	Threatened species to which similar
[Reserved]....	[Reserved]..	[Reserved]..	[Reserved].

§ 17.42 Similarity of appearance due to limited geographic application of endangered or threatened species status (C.C.C.)

(a) *Wildlife listed as endangered in only a portion of its range—Treatment of all such wildlife as endangered.* Whenever wildlife is listed as endangered in only a portion of its range, the Director deems it advisable, based on the factors listed in section 1533(e) of the Endangered Species Act of 1973 [16 U.S.C. 1533(e)], to treat all such wildlife, regardless of geographic origin, as endangered, unless documentation or other evidence is presented which clearly establishes that any such wildlife in ques-

tion did not originate from the of its range where it is listed as endangered.

(b) *Wildlife listed as threatened in only a portion of its range—Treatment of all such wildlife as threatened.* Whenever wildlife is listed as threatened in only a portion of its range, the Director deems it advisable, based on the factors listed in section 1533(e) of the Endangered Species Act of 1973 [16 U.S.C. 1533(e)], to treat all such wildlife, regardless of geographic origin, as threatened, unless documentation or other evidence is presented which establishes that any such wildlife in question did not originate from the of its range where it is listed as threatened.

Example: The "XYZ" is listed as endangered, and its range is Mexico, Central America and South America. However, a portion of the range where it is endangered includes only countries A, B and C. From country X will also be considered endangered, unless it is accompanied by documentation or other evidence to show that it came from country X.

[FR Doc.74-30500 Filed 12-31-74;]